

### **REMARKS / ARGUMENTS**

Claims 1-22 and 24-46 are pending in the instant application. Claims 1-22 and 24-26 were previously presented. Claims 27-46 are new claims. Claims 23 have been previously cancelled. Claims 1, 9, 17, 27 and 37 are independent claims. Claims 2-8, claims 10-16, claims 18-22 and 24-26, claims 28-36 and claims 38-46 depend directly or indirectly from claims 1, 9, 17, 27 and 37 respectively. Claims 1-4, 6-7, 9-22 and 24-25 are amended to clarify the claim language for further prosecution. The Applicant points out that the amendments in the claims may find support in, for example, paragraphs 52 and 69, and in Figs. 2, 4 and 9a-9b. The Applicant respectfully submits that the claims define patentable subject matter in view of the following remarks.

The Examiner objected to the claim language in claims 9-16.

Claims 1-4, 6, 9-12, 14, 17-20 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (US Pub. No. 20040039817A1, hereinafter "Lee").

Claims 5, 13, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Kostic et al. (US Pub. No. 20030134642A1, hereinafter "Kostic").

Claims 7, 8, 15, 16, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Rom (US Pub. No. 2006360264B1, hereinafter "Rom").

#### **I. OBJECTION TO THE LANGUAGE OF CLAIMS 9-16**

The Examiner objected to the claim language "A machine-readable storage, having stored thereon a computer program" in claims 9-16. The Examiner suggested the following amendment: "A tangible computer readable recording medium for storing a computer program for execution by computer". The Applicant respectfully traverses the objection. Nevertheless, to further prosecution, the Applicant has amended claims 9-16 to read "A computer readable medium for storing a computer program for execution by computer". The Applicant respectfully requests that the objection to claims 9-16 be withdrawn.

#### **II. REJECTION UNDER 35 U.S.C. § 102**

MPEP 2131 states:

"[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See MPEP at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

**A. Lee Does Not Anticipate Claims 1-4, 6. 9-12, 14, 17-20 and 26**

The Applicant turns to the rejection of claims 1-4, 6. 9-12, 14, 17-20 and 26 under 35 U.S.C. § 102(e) as being anticipated by Lee. Without conceding that Lee qualifies as prior art under 35 U.S.C. 102(e), the Applicant respectfully traverses this rejection as follows.

**A(1) Independent Claims 1, 9 and 17**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Lee does not disclose or suggest at least the limitation of “said access device **re-establishes communication** with one of said plurality of access points **based on said sent determined load** of said **each one of said plurality of access points**,” as recited in Applicant’s claim 1.

In the Office Action, the Examiner asserts that Lee discloses the following:

“Regarding Claim 1, Lee discloses a method for providing load balancing in a hybrid wired/wireless local area network [hybrid wired/wireless local area network: 0004] [a method... responsive to said at least one polling message , determining a load on each one of said plurality of access points and sending said determined load of said each one of said plurality of access points to said access device [each of transmitting AP sends probe response message contains information about each AP's determined QBSS Load value: 0037-0038].”

See pages 2-3 at the Office Action. The Examiner relies for support on Lee in ¶¶0037-0038 and equates Lee's QBSS Load value to be the same as the claimed "determined load" for the wired/wireless hybrid network. Furthermore, the Examiner also relies for support on Lee which discloses the wireless station selecting an AP with the lowest QBSS load value. Specifically, Lee discloses the following:

**"the wireless station selects the AP with the highest RSSI value in step 440. ... if there are no APs satisfying conditions (2) and (4) in step 436, the wireless station selects the AP having the lowest QBSS\_Load number and meeting the requirement of condition (4) (reproduced below) in step 424."**

*RSSI => -82 dBm*

See Lee at page ¶0055 (emphasis added). The Applicant points out that Lee discloses that the wireless station selects the AP based on the lowest QBSS load number, where the selected AP also meeting the at least -82 dBm RSSI value requirement. In this regard, Lee at least does not disclose or suggest that there is any re-establishment of communication between the wireless station and the AP. Therefore, the Applicant maintains that Lee does not anticipate the Applicant's claim in disclosing or suggesting "said access device **re-establishes communication with one of said plurality of access points based on said sent determined load of** said each one of said **plurality of access points**," as recited in Applicant's claim 1. The Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 102(e) be withdrawn.

Likewise, independent claims 9 and 17 are similar in many respects to claim 1, and are therefore submitted to be allowable for the same rationale presented in claim 1. Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of independent claim 1, 9 and 17 should such a need arise.

**A(2) Dependent Claims 2-4, 6, 10-12, 14, 18-20 and 26**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C. § 102(e) as being anticipated by Lee has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-4, 6, 10-12, 14, 18-20 and 26 depend directly or indirectly from independent claims 1, 9 and 17, and are, consequently, also respectfully submitted to be allowable. Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of claims 2-4, 6, 10-12, 14, 18-20 and 26 should such a need arise.

**III. REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the

analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**A. The Proposed Combination of Lee and Kostic Does Not Render Claims 5, 13, 21 and 22 Unpatentable**

The Applicant turns to the rejection of claims 5, 13, 21 and 22 as being unpatentable over Lee in view of Kostic. Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C.

§ 102(e) as being anticipated by Lee has been overcome and requests that the rejection be withdrawn. Additionally, claims 5, 13, 21 and 22 depend directly or indirectly from independent claims 1, 9 and 17, and are, consequently, also respectfully submitted to be allowable.

In addition, regarding claim 5, 13, 21 and 22, the Examiner states:

"Regarding Claims 5, 13, 21 & 22, Lee discloses the method according to claim 1, 11 & 17 as stated above but does not explicitly disclose sending said received at least one polling message from said at least one of a plurality of access points to a switch using a messaging protocol message; and receiving said at least one polling message by said switch. Kostic et al. discloses centralized association/terminations communications controlled WLAN method and system in which a plurality of access points communicate with access point controller 600 (claimed switch for switching between access points) according to specified 802.11 standards."

See the Office Action at page 6. The Examiner concedes that **Lee does not** disclose both **a switch** and sending and receiving the polling message from the AP to the network switch **using messaging protocol message**. The Examiner looks to Kostic to teach the deficiencies of Lee.

The Examiner alleges that Kostic's AP controller 600 is the claimed "switch" for switching between access points. The Applicant respectfully disagrees and points out that the Kostic reference does not disclose that the AP controller 600 is a switch, let alone disclosing or suggesting that the AP controller 600 performs any AP switching functions, as alleged by the Examiner. If the Examiner disagrees,

the Applicant respectfully requests the Examiner to provide specific citation for factual support to the above allegation.

In addition, regarding the Examiner's burden to provide factual support, the Applicant respectfully refers the Examiner to MPEP at § 2142, which states:

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142. Based on the lack of support rationale, the Applicant maintains that the Kostic does not disclose or suggest at least "a switch", as recited in claims 5, 13, 21 and 22 by the Applicant. Likewise, Lee does not overcome the above deficiencies of Kostic.

Furthermore, even assuming for the sake of argument that Kostic's AP controller 600 is a "network switch" (which it is not), Kostic still does not disclose "sending and receiving the polling message from the AP to the switch **using messaging protocol message**". The Applicant points out that Kostic discloses that the messages sent between the APs includes capability information indicating signal strength of the available AP using beacon frame. The Examiner is referred to Kostic in Fig. 3, and also in Table 1 and 3, which discloses that the beacon frame message structure is no different than the polling messages used between the APs and the mobile stations. In this regard, Kostic discloses only the same beacon frames used between the AP controller 600 and the APs, which is not the



claimed "**messaging protocol message**". Lee also does not overcome the above deficiencies of Kostic.

Therefore, the Applicant maintains that the combination of Lee and Kostic does not establish a prima facie case of obviousness to reject claims 5, 13, 21 and 22, and are therefore submitted to be allowable.

**B. The Proposed Combination of Lee and Rom Does Not Render Claims 7, 8, 15, 16, 24 and 25 Unpatentable**

The Applicant turns to the rejection of claims 7, 8, 15, 16, 24 and 25 as being unpatentable over Lee in view of Rom. Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C. § 102(e) as being anticipated by Lee has been overcome and requests that the rejection be withdrawn. Additionally, claims 7, 8, 15, 16, 24 and 25 depend directly or indirectly from independent claims 1, 9 and 17, and are, consequently, also respectfully submitted to be allowable.

In addition, regarding claim 7, 8, 15, 16, 24 and 25, the Examiner states:

"Regarding Claims 7, 8, 15, 16, 24 and 25, Lee discloses the method according to claim 6, 14 & 17 as stated above but does not explicitly disclose sending information corresponding to said determined load to at least a portion of said plurality of access points using a messaging protocol message; Rom discloses the WLAN method and system comprising sending information corresponding to said determined load to at least a portion of said plurality of access points using a messaging protocol message as claimed [access points send its load information to another access

point when handoff is necessity: col. 4, line 64-col. 5, line 4 & col. 6, line 55-col. 7, line 4.”

See the Office Action at page 7. The Examiner alleges that Rom's sending load information sent between the APs in a wireless LAN is the same as the claimed “messaging protocol message” and “redistributing the load”. The Examiner is referred to the argument that Rom neither discloses nor suggests that the load information sent between APs for handoff is determined by a network switch. Rom also does not disclose that the message for handoff sent between the APs is for a hybrid wired and wireless local area network. In this regard, the Applicant maintains that Rom also does not overcome the deficiencies of Lee and Kostic to render claims 7, 8, 15, 16, 24 and 25 unpatentable, and are therefore submitted to be allowable.

#### **IV. Arguments to the Allowability of New Claims 27-46**

The Applicant submits that claims 27-36 and 37-46 are new claims from the perspective of the access device, and are, in many respects, similar to claims 1-8 and 17-26, respectively. Therefore, the Applicant submits that claims 27-36 and 37-46 are also allowable based on the above arguments presented with regard to claims 1-8 and 17-26.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-22 and 24-46 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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